INDEX

PAGE

PETITION FOR WRIT OF CERTIORARI 1

Summary Statement of the Matter Involved 2

Statement of Grounds of Jurisdiction 3

Questions Presented 8

Reasons Relied On for Allowance of the Writ 9

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI 10

Opinion of Court Below 10

Statement of Grounds of Jurisdiction 10

Statement of the Case 11

Specification of Errors 11

Argument and Authorities 11

POINT I. The trial court and the United States Court of Appeals, Tenth Circuit, erred in holding that the Tierra Amarilla Land Grant is not a community land grant nor a grant to an individual or individuals for the purpose of establishing a community 11

POINT II. The trial court erred in enjoining petitioners from issuing certificates of election in or otherwise carrying into effect an election for a Board of Trustees of the Tierra Amarilla Land Grant, which erroneous judgment and decree was affirmed by the United States Court of Appeals, Tenth Circuit ... 22

Conclusion 23

AUTHORITIES

Beard v Federy, 3 Wall. 478, 18 L. Ed. 88 ..... 6, 20

Board of Trustees v Brown, et al, 33 N. M. 398, 269 P 51 18

Hamilton Brown Shoe Co. v Wolf Bros. & Co., 240 U. S. 251, 60 L. Ed. 629 7

Hiatt v Brown, 339 U. S. 103, 94 L. Ed. 691 7

Jones v St. Louis Land & Cattle Co., 232 U. S. 355, 58 L. Ed. 636 ..... 6, 16, 18

Meador v Norton, 11 Wall. 442, 20 L. Ed. 184 6

U. S. v Murillo, 1 Wall. 709, 17 L. Ed. 626 6

Yeast v Pru, 292 Fed. 598 13

TEXTS AND STATUTES

Act of July 22, 1854, 10 Stat. 308, Sec. 8 20

Act of Congress of June 21, 1860 (12 Stat. 71) 3, 6, 7, 8, 9, 12, 17, 18, 22

Act of June 25, 1948, Chap. 646, Sec. 1, 62 Stat. 928, FCA 28, Sec. 1254 (1) 3

Mexican Colonization Law of August 18, 1824 15

New Mexico Statutes 1941 Annotated, Art. 1, Chap. 9, Sec. 9-102 ..... 5, 22

New Mexico Statutes 1941 Annotated, Art. 1, Chap. 9, Sec. 9-106 6

Regulations for the Colonization of the Territories of Nov. 21, 1828 15

Treaty of Peace, Guadalupe Hidalgo (9 Stat. 922 943) 4, 6, 7, 16, 18

In The

Supreme Court of the United States

October Term, 1951

No.

M. G. MARTINEZ, FABIAN VIGIL, SALOMON LOVATO, CRUZ TRUJILLO and the BOARD OF COUNTY COMMISSIONERS, Rio Arriba County, New Mexico,

Petitioners.

vs.

J. LUIS RIVERA, J. ARMANDO RIVERA, J. GASPAR RIVERA, RUBEN RIVERA CHAVEZ, EMILIA RIVERA MUNIZ, ROSINDA RIVERA VALDEZ, MATILDA RIVERA, ROBERT PETERSON, EARL SHAWCROFT, JOHN SHAWCROFT, WADE SHAWCROFT, W. B. HAMILTON, MALCOLM STEWART, SR., ARAMINTA K. STEWART, LUGARDA SARGENT, MERCEDES SARGENT MIDDLEMIST, DORA SARGENT QUINLAND, MARGARET SARGENT GARCIA, T. W. CROWTHER, HOWARD CROWTHER, DON CROWTHER, WM. L. BAGWELL, L. N. BAGWELL, KARL BRUESSELBACH, and KARL BRUESSELBACH, trustee of the estate of WILLIAM KINDERMAN, deceased,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

To the Honorable Fred M. Vinson, Chief Justice of the United States of America, and to the Honorable the Associate Justices of the Supreme Court of the United States:

The petition of M. G. Martinez, Fabian Vigil, Salomon Lovato, Cruz Trujillo and the Board of County Commissioners, Rio Arriba County, New Mexico, for a writ of certiorari to be directed to the United States Court of Appeals, Tenth Circuit, to review a judgment of that court entered on the 16th day of April, 1952, in favor of respondents and against petitioners, respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED

1. The case was brought in the United States District Court for the District of New Mexico by the respondents, asking an injunction against the petitioners enjoining them from proceeding with an election, set for April 2, 1951, to elect a Board of Trustees of the Tierra Amarilla Land Grant, or from canvassing the votes of said election, or from issuing any certificates of election.

All of the named petitioners, except Cruz Trujillo, are members of the Board of County Commissioners of Rio Arriba County, New Mexico. Cruz Trujillo is the County Clerk of said county and has certain duties to perform with respect to elections.

Federal jurisdiction was based upon diversity of citizenship (Tr 1-6).

A final decree was entered by the district court on June 29, 1951, enjoining the petitioners from issuing any certificates of election or performing any acts in connection with said election, or from holding another election and from acting as a Board of Trustees and *from executing any instrument based upon the assumption that the Tierra Amarilla Grant (a tract of land consisting of approximately 595,000 acres [Tr 113] in northern New Mexico and southern Colorado [Tr 79]) is a community grant or such grant as is mentioned in Chapter 9, Article I, New Mexico Statutes 1941 Annotated (Tr 42-43).* Upon appeal to the United States Court of Appeals, Tenth Circuit, the judgment of the District Court was affirmed (Tr 141). (Emphasis ours)

2. The Mexican documents which were introduced in evidence, as well as the report of the Surveyor General of New

Mexico, show that the original grant of the land in question by the Mexican government on July 20, 1832, was made to Manuel Martinez, his eight sons (one of whom was Francisco Martinez) and those who might accompany him, with a provision that the pastures, watering places and roads should be free, according to the customs existing in every settlement (Tr 30-31, 87-121). The petition for confirmation of the grant was filed on behalf of Francisco Martinez and *associates* (Tr 89) with the Surveyor General of New Mexico on August 25, 1856 (Tr 113). The Surveyor General recommended this claim for confirmation in his report to Congress, dated September 10, 1856 (Tr 30). This and other claims are referred to in a letter from the Surveyor General to the Commissioner of the General Land Office dated January 12, 1858, which is the letter mentioned in the Act of Congress of June 21, 1860, (12 Stat. 71). Notwithstanding these *undisputed* facts, the Court of Appeals affirmed the judgment of the District Court and held that Congress confirmed the grant as a private land grant to Francisco Martinez, that its action was conclusive, and refused to consider the antecedent documents (Tr 141).

II.

STATEMENT OF GROUNDS OF JURISDICTION

1. The statutory provision believed to sustain the jurisdiction of this court is Section 1 of Chapter 646, Act of June 25, 1948, 62 Stat. 928, F. C. A. 28, Sec. 1254 (1).

2. The statute of the United States, the construction and effect of which is involved, is the Act of Congress of June 21, 1860, (12 Stat. 71) the pertinent parts of which read as follows:

"That the private land claims in the territory of New Mexico, as recommended for confirmation by the surveyor-general of that territory, in his letter to the Commissioner of the General Land Office, of the twelfth of January, eighteen hundred and fifty eight designated as numbers one, three, four, six, eight, nine, ten, twelve, fourteen, fifteen, sixteen, seventeen, and eighteen . . . be, and they are hereby confirmed. . . ."

"Sec. 3. . . . That the private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor-general in his reports and abstract marked Exhibit A, as communicated to Congress by the secretary of the interior in his letter dated the third of February eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed. . . ."

"Sec. 4. . . . That the forgeoing confirmation shall only be construed as quit-claims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

There is also involved Article 8 of the Treaty of Peace between the United States and Mexico, executed at the city of Guadalupe Hidalgo (9 Stat. 922-943), which reads as follows:

"Rights of Mexicans established in territories ceded to United States—Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

"Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

"In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States."

Although there is no question as to its validity or construction, there is incidentally involved, Article I of Chapter 9, New Mexico Statutes 1941 Annotated, Section 9-102 of which reads as follows:

"APPLICATION OF ARTICLE—This article shall apply to all grants of land made by the government of Spain, or by the government of Mexico, to any community, town, colony or pueblo, or to any individual for the purpose of founding or establishing any community, town, colony or pueblo; to all grants that were prior to March 18, 1907, confirmed by the Congress of the United States, or by the court of private land claims, to any community, town, colony or pueblo, and to all grants or private land claims recommended by any surveyor general of New Mexico for confirmation by Congress to any town, colony, community or pueblo, or designated as a grant to any town, colony, community or pueblo, in any report or list of land grants prepared by such surveyor general and confirmed by Congress in accordance therewith; but shall not apply

> to any land grant which is now managed or controlled in any manner, other than herein provided, by virtue of any general or special act."

The article deals generally with the management and control of community land grants by a Board of Trustees, with the manner of election of the Board, etc. Section 9-106 provides for the calling of such an election by the Board of County Commissioners in certain instances and for holding the election in the manner provided by law for holding general elections.

3. This case involves the construction and effect of the Act of Congress of June 21, 1860, (12 Stat. 71), which confirms a Mexican Land Grant in furtherance of the provisions of Article 8 of the Treaty of Guadalupe Hidalgo between the United States and Mexico. The Court of Appeals refused to consider the original documents to determine the nature of the grant as made by the Mexican government, but held, in effect, that, whatever its nature originally, Congress confirmed it as a private land grant to one Francisco Martinez and such action by Congress was conclusive upon everybody, even persons claiming adversely to Francisco Martinez under title derived from Mexico. We believe this holding to be in conflict with decisions of this court in Jones v St. Louis Land & Cattle Co., 232 U. S. 355, 58 L. Ed. 636; Beard v Federy 3 Wall. 478, 18 L. Ed. 88; U. S. v Murillo, 1 Wall. 709, 17 L. Ed. 626; and Meador v Norton, 11 Wall. 442, 20 L. Ed. 184, which hold that confirmatory acts, such as the one here involved, merely confirm rights as they existed under the prior government, do not create new rights nor amount to a gratuity from the United States, and, in any event, only segregate lands of the United States from those which, under the former sovereignty, had become private property and do not adjudicate conflicting private claims. Moreover, the construction placed upon said Act of Con-

gress by the Court of Appeals is such that it would be in violation of the Fifth Amendment to the federal constitution as depriving persons of property without due process of law. Thus, there are raised, in accordance with Rule 38 of this court, important questions of federal law, which, insofar as the particular facts of this case are concerned, have not been, but should be, settled by this court, and which are probably in conflict with applicable decisions of this court.

4. Cases believed to sustain jurisdiction are: Hamilton Brown Shoe Co. v Wolf Bros. & Co., 240 U. S. 251, 60 L. Ed. 629; Hiatt v Brown, 339 U. S. 103, 94 L. Ed. 691.

5. The questions involved are substantial because

(a) They involve the question of whether the United States performed its duty to Mexican citizens and their heirs, as required by the Treaty of Guadalupe Hidalgo.

(b) Property rights in some 595,000 acres of land, worth approximately $10.00 per acre (Tr 70), are indirectly affected.

(c) The construction placed upon the Act of Congress of June 21, 1860, by the court of appeals makes it violative of the Fifth Amendment to the federal constitution.

(d) The final outcome of this case may determine whether a claim or claims should be presented to Congress for compensation by the heirs of Mexican citizens, if they were deprived by the Act of Congress of June 21, 1860, (12 Stat. 71) of property rights guaranteed by the Treaty of Guadalupe Hidalgo and the federal constitution.

6. There is appended hereto as Exhibit "A" a copy of the opinion of the United States Court of Appeals, Tenth Circuit, rendered in this case.

7. The date of the judgment sought to be reviewed is the 16th day of April, 1952, and the date upon which this petition and brief are presented is the 2nd day of July, 1952.

III.

QUESTIONS PRESENTED

The questions involved are:

1. Did the trial court and United States Court of Appeals, Tenth Circuit, err in holding that the Tierra Amarilla Land Grant is not a community grant or a grant to an individual or individuals for the purpose of establishing a community?

2. Did the United States Court of Appeals, Tenth Circuit, err in affirming the judgment and decree of the trial court, enjoining petitioners from issuing certificates of election in, or otherwise carrying into effect an election for a Board of Trustees of the Tierra Amarilla Land Grant?

The second question, above stated, is incidental to the first because, if the grant is a community grant or one to individuals for the purpose of establishing a community, it necessarily follows that petitioners should not have been enjoined. Both questions involve subordinate questions, such as,

(a) Should the Act of Congress of June 21, 1860, be construed so as to confirm the Tierra Amarilla Land Grant as a community grant or a private grant?

(b) If said act confirms it as a private grant, is the Act conclusive as to petitioners and the community which they represent?

(c) If it was intended by Congress to confirm it as a private grant conclusively as against petitioners and the community they represent, would this make the Act

of Congress of June 21, 1860, violative of the Fifth Amendment to the federal constitution?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The Court of Appeals, Tenth Circuit, has decided important questions of federal law which have not been, but should be, settled by this court.

2. The Court of Appeals, Tenth Circuit, has decided a federal question in a way probably in conflict with applicable decisions of this court.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this court, directed to the United States Court of Appeals, Tenth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said United States Court of Appeals, Tenth Circuit, in the case numbered and entitled on its docket, No. 4357, M. G. Martinez, et al, appellants vs. J. Luis Rivera, et al, appellees, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said United States Court of Appeals, Tenth Circuit, be reversed by this court, and for such other relief as to this court may seem proper.

Dated the 2nd day of July, 1952.

QUINCY D. ADAMS
Albuquerque, N. M.

HARRY L. BIGBEE
Santa Fe, New Mexico
Attorneys for Petitioners

In The

Supreme Court of the United States

October Term, 1951

No.

M. G. MARTINEZ, FABIAN VIGIL, SALOMON LOVATO, CRUZ TRUJILLO and the BOARD OF COUNTY COMMISSIONERS, Rio Arriba County, New Mexico,

Petitioners,

vs.

J. LUIS RIVERA, J. ARMANDO RIVERA, J. GASPAR RIVERA, RUBEN RIVERA CHAVEZ, EMILIA RIVERA MUNIZ, ROSINDA RIVERA VALDEZ, MATILDA RIVERA, ROBERT PETERSON, EARL SHAWCROFT, JOHN SHAWCROFT, WADE SHAWCROFT, W. B. HAMILTON, MALCOLM STEWART, SR., ARAMINTA K. STEWART, LUGARDA SARGENT, MERCEDES SARGENT MIDDLEMIST, DORA SARGENT QUINLAND, MARGARET SARGENT GARCIA, T. W. CROWTHER, HOWARD CROWTHER, DON CROWTHER, WM. L. BAGWELL, L. N. BAGWELL, KARL BRUESSELBACH, and KARL BRUESSELBACH, trustee of the estate of WILLIAM KINDERMAN, deceased,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINION OF COURT BELOW

The opinion of the United States Court of Appeals, Tenth Circuit, appears at pages 137 to 141 in the record and is annexed hereto as Exhibit A.

II.

STATEMENT OF GROUNDS OF JURISDICTION

This has already been stated in the preceding petition under paragraph II (p. 3), which is hereby adopted and made a part of this brief.

III.

STATEMENT OF THE CASE

This has already been stated in the preceding petition under paragraph I (p. 2), which is hereby adopted and made a part of this brief.

IV.

SPECIFICATION OF ERRORS

1. The trial court and the United States Court of Appeals, Tenth Circuit, erred in holding that the Tierra Amarilla Land Grant is not a community land grant or a grant to an individual or individuals for the purpose of establishing a community.

2. The United States Court of Appeals, Tenth Circuit, erred in affirming the judgment and decree of the trial court enjoining petitioners from issuing certificates of election in or otherwise carrying into effect an election for a Board of Trustees of the Tierra Amarilla Land Grant.

V.

ARGUMENT AND AUTHORITIES

POINT I. THE TRIAL COURT AND THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT, ERRED IN HOLDING THAT THE TIERRA AMARILLA LAND GRANT IS NOT A COMMUNITY LAND GRANT NOR A GRANT TO AN INDIVIDUAL OR INDIVIDUALS FOR THE PURPOSE OF ESTABLISHING A COMMUNITY.

The question raised under Specification of Error No. 1 depends on the construction which should be placed upon

the Act of Congress of June 21, 1860, (12 Stat. 71) and on whether the act, if construed as confirmation of a private land grant, is conclusive upon the petitioners and the community whose rights are involved in the election of a Board of Trustees.

The pertinent parts of the Act above referred to are quoted in the petition at page 4, to which reference is made.

It will be noted that the Act itself does not mention the Tierra Amarilla Land Grant by that name. This name is derived from the original Mexican documents and the petition for confirmation filed with the surveyor general by Francisco Martinez (Tr 87). The Act designates it as private land claim number three (3) as recommended in the letter of the surveyor general of *January 12, 1858.* This letter (Tr 120-121) designates the claim as, "3. Manuel Martinez, Rio Arriba County".

In the opinion of the Court of Appeals (Tr 138) it is erroneously stated that the grant was confirmed by Sec. 3 of the Act of June 21, 1860. Actually the grant in question was confirmed by the first (although unnumbered) section. Section 3 confirms claims numbered 20 to 38 referred to in the surveyor general's letter of *February 3, 1860.* None of these claims are involved in the present case.

It should be stated at the outset that the designation in this letter of the surveyor general of certain *Private* Land Claims, including claim No. 3 of Manuel Martinez, has no significance whatsoever with regard to the questions here raised. This designation was made merely to distinguish these claims from the Pueblo grants also mentioned in the letter. This is apparent from the fact that the Schedule of "*Private* Land Claims" attached to the letter includes grants to "Town of Cara Colorado", "Town of Tecolote, San Miguel County", "Town of Chilili, Bernalillo County",

and "Town of Belen, Valencia County", all of which are, without question, community land grants. For example, see Yeast v Pru, 292 Fed. 598.

In order to determine the meaning and intent of Congress in confirming the grant, both the letter above mentioned and the surveyor general's report must be considered. The surveyor general's report to Congress reads as follows:

> " 'Francisco Martinez, Present claimant, heir of Manuel Martinez, Original Grantee'. This claim was filed in this office on the 25th day of August, 1856, 'On the 23rd day of April, 1932, Manuel Martinez, petitioned Santiago Abreau, Political Chief of the Territory of New Mexico for certain tract of land, situated in the County of Rio Arriba; called the Tierra Amarilla and bounded on the North by the Navajo River; on the South by the Nutrias River, on the East, the mountain range, and on the west, the mouth of the Laguna de Los Caballos.'
>
> "On the 29th of April, 1932, this petition was referred by the Political Chief to the Most Excellent Territorial Deputation, who on the same day referred it to the Corporation of Abiquiu, requiring it to report on the propriety of making the grant as prayed for by the petition.
>
> "On the 15th day of May, 1932, the Corporation of Abiquiu reported favorably on the petition requiring, however, that the pastures and watering places, should remain free for benefit of the inhabitants of Abiquiu 'on the 16th day of July, 1932, Manuel Martinez petitioned anew the Political chief, objecting to the pastures and watering places being excepted'. On the 20th day of July, 1932, the Most Excellent Territorial Deputation, granted to Manuel Martinez and those who should accompany him the land petitioned for under certain conditions therein contained, and directed the Constitutional Justice of Abiquiu to place the parties in

possession of the land so granted, leaving the pastures watering places and roads free, according to the customs existing in every settlement. The action of this office is taken on the original documents filed by the claimant.

" 'The signatures, by the Testimony of Donaciano Vigil are proven to be genuine.'

" 'The absence of the Certificate of the Justice of Abiquiu, does not invalidate the grant, the testimony presented in the case showing that the Justice of Abiquiu proceeded to place the parties in possession; but was compelled to return to Abiquiu on account of the hostilities of the Indians.'

" 'The Testimony also shows that the original Grantee, and the present claimant have been in the peaceable and quiet possession of the land for a period of Twenty two years.'

"The Provincial Deputation was authorized by the laws of the Republic of Mexico, to make donations of land to individuals and this case being covered by the Treaty of Guadalupe Hidalgo, and the decision of the Supreme Court of the United States, in the case of 'J. C. Fremont vs. the U. S.' the Grant made to Manuel Martinez, of which Francisco Martinez is the present claimant, is deemed by this office to be a good and valid grant, and the Congress of the United States is hereby respectfully recommended to confirm the same, and cause a Patent to be issued therefor by the proper Department, and the land embraced within the boundaries set forth in said grant to be surveyed.

"(Signed) Wm. Pelham
"Surveyor General of New Mexico
"Surveyor General's Office
"Santa Fe, New Mexico

"September 10, 1856" (Tr 30-31)

The above report shows clearly that the original grant

was made on the "20th day of July, 1832" to "Manuel Martinez and those who should accompany him" and that the pastures, watering places and roads were "free, according to the customs existing in every settlement", and it is *this* grant which the surveyor general recommends be confirmed. It is stated that "Francisco Martinez is the present claimant" but the report does not recommend that the grant be confirmed to him or that a patent be issued to him. Francisco Martinez did not claim the grant as his individual and private property. In his petition he asked that it be "confirmed to your petitioner *and associates* in fee." (Tr 89)

Thus, it appears, without even considering the Mexican documents and from the records of our own government, that the original grant from Mexico was to Manuel Martinez and those who should accompany him and that the pastures, watering places and roads were common. In other words, the original grant was to individuals for the purpose of establishing a community (see the Mexican Colonization Law of August 18, 1824, and the Regulations for the Colonization of the Territories of November 21, 1828, material portions of which are attached as Exhibits B and C to this brief) and this was the kind of grant which was confirmed.

As a matter of fact, the respondents have never contended that the Tierra Amarilla Land Grant was not a community grant under the government of Mexico. The Court of Appeals does not dispute this fact. For present purposes, we believe it to be conceded that, under the laws of Mexico, it was a community grant or a grant to individuals for the purpose of establishing a community. A community grant as we understand it was, in the strict sense, one made to a community already established. In the present case the grant, when made in 1832, was probably one to individuals for the purpose of establishing a community, since it appears that when the Justice of Abiquiu proceeded to place

the parties in possession, they were compelled to return "on account of the hostilities of the Indians" (Tr 31).

The position taken by respondents, as well as the District Court and the Court of Appeals, is that regardless of the nature of the grant under the government of Mexico, Congress confirmed the grant to Francisco Martinez individually as a private land grant and that this act is final and conclusive. See opinion of the Court of Appeals (Tr 141).

This, in effect, is to say that Congress made a gift of some 595,000 acres of land to Francisco Martinez as an individual, which Mexico had previously granted to an entire group of individuals and that Congress did this in violation of the solemn obligation of the Treaty of Peace between the United States and Mexico, executed at Guadalupe Hidalgo on February 2, 1948, (9 Stat. 922), Article 8 of which is quoted in the petition at page 4. We say that Congress did no such thing. This honorable court had under consideration the very same Act of Congress, now involved, in the case of Jones v St. Louis Land & Cattle Co., 232 U. S. 355, 58 L. Ed. 636 and said very plainly that:

> "The Act of Congress *was not a gratuity*. . . . It was a confirmation of rights which existed and as they existed." (Emphasis ours)

The opinion of the Court of Appeals does not mention this case, although it was cited and strongly relied upon by appellants, the petitioners here. We submit that the case cannot be distinguished and that it is in conflict with the decision in the present case. In the opinion of the Court of Appeals (Tr 139) some point seems to be made of the alleged fact that during the period from the date of confirmation of the grant until March 1, 1951, "the grant had been managed and controlled as a private land grant and no action

had ever been taken to elect a Board of Trustees to control and manage such grant". We do not know what bearing this has on the case since no question of estoppel or laches was raised but, in any event, there is no evidence to support the statement. A similar statement was made by the trial court in its opinion (Tr 37) but there is nothing in the record to this effect. The transcript of proceedings at the trial (Tr 63-76) discloses no testimony of this kind nor is there any stipulation to that effect. The only questions argued or submitted concerned the nature of the grant and this would necessarily depend on occurrences at and prior to the date of confirmation, not subsequent thereto.

Summarizing the argument, we say that the confirmatory act (12 Stat. 71) confirmed the Tierra Amarilla Land Grant as a community grant or grant to individuals for the purpose of establishing a community because

(a) It was such a grant under the government of Mexico at the time New Mexico was acquired by the United States, a fact as yet not denied by respondents or disputed by the lower courts.

(b) The surveyor general, in his report to Congress, stated that the grant, which was recommended for confirmation, was made to "Manuel Martinez and those who should accompany him" and that the pastures, watering places and roads were "free, according to the customs existing in every settlement", which language is descriptive of a community grant, *not* a private grant. It is not to be lightly assumed that, with this information before it, Congress intended to donate to one individual some 595,000 acres of land which belonged to an entire community.

(c) Francisco Martinez, who applied for confirmation of the grant, asked that it be confirmed to himself *and associates.*

(d) It should be presumed that Congress acted in furtherance of the Treaty of Guadalupe Hidalgo, not in violation of it.

(e) The Act of Congress was not a gratuity, but merely confirmed rights that existed and as they existed. Jones v St. Louis Land & Cattle Co., supra.

However, if, in spite of these reasons to the contrary, we assume, for the sake of argument, that Congress did confirm the grant to Francisco Martinez, individually, as a private grant, there remains to be considered whether this action is conclusive upon the petitioners or the community whose rights they represent. This question is answered in the negative by the very terms of the Act itself, Section 4 of which provides:

> "That the foregoing confirmation shall only be construed as quitclaims or relinquishments, on the part of the United States, and *shall not affect the adverse rights of any other person or persons whomsoever.*" (Emphasis ours)

The decisions of this court upon the subject have been analyzed by the Supreme Court of New Mexico in Board of Trustees v Brown et al, 33 N. M. 398, 269 P 51, where the court said:

> "The leading case in exposition of a reservation similar to Section 4 is Beard v Federy, 3 Wall. 478, 18 L. Ed. 88. There Mr. Justice Field, speaking for the court, demonstrates that 'third persons', the terms employed in the act of March 3, 1851, does not embrace 'all persons other than the United States and the claimants, but only those who hold superior titles, such as will enable them to resist successfully any claim of the government in disposing of the property.'
>
> "Following that decision, it has been well established

that confirmation is conclusive as *against the United States* and as against a mere intruder or one claiming a title originating under the United States subsequent to the change of sovereignty. Tameling v U. S. Freehold & Emigration Co., 93 U. S. (3 Otto) 644, 23 L. Ed. 998; Knight v United Land Association, 142 U. S. 161, 12 S. Ct. 258; 35 U. Ed. 974; Russell V Maxwell Land Grant Co., 158 U. S. 253, 15 S. Ct. 827, 39 L. Ed. 971.

"But it is as well established that, in a case where the adverse party claims title under the former sovereign which is, equally with that of the confirmee, entitled to protection by the United States, *confirmation is not conclusive*, and —it is for the courts to decide which claimant has 'the better right'. Beard v Federy, supra; Henshaw v Bissell, 18 Wall. 255, 21 L. Ed. 835; Rodriguez x U. S. supra; Miller v Dale, 92 U. S. 473, 23 L. Ed. 735; Adam v Norris, supra; Meador v Norton, supra; Carpenter v Montgomery, supra; More v Steinbach, 127 U. S. 70, 8 S. Ct. 1067, 32 L. Ed. 51; U. S. v Conway, supra; U. S. v Baca, 184 U. S. 653, 22 S. Ct. 541, 46 L. Ed. 733.

"Tameling v United States Freehold & Emigration Co., supra, is relied upon by appellee, and is a frequently cited case. That decision is not, however, opposed to the rule just stated. As Mr. Justice Davis there said, the cause was submitted upon an agreed statement of facts. That statement appears in the report of the decision by the Colorado territorial Supreme Court. 2 Colo. 411. It there appears that the only fact stipulated with reference to the defendant's claim was that he was in possession. For the purposes of the decision, *he was a mere intruder*. The language of the opinion should be considered in the light of that fact.

"Considering these decisions, we see no reason for discounting the face value of section 4. It seems to reserve the right of each grant to contest title with the other. Such was the uniform policy. Whatever may have been the intention of the surveyor general, we are satisfied

> that Congress left the question open." (Emphasis ours)

We believe the Supreme Court of New Mexico has correctly interpreted the decisions of this court and, as so interpreted, the decision of the lower courts in the present case is in conflict with Beard v Federy, 3 Wall. 478, 18 L. Ed. 88 as well as the other cases cited.

It seems reasonable that Congress did not intend to conclusively adjudge the rights of *all* claimants to Mexican land grants in an ex parte proceeding before the surveyor general, of which no notice was or was required to be given. This would hardly be in keeping with democratic processes and, in our opinion, would violate the due process clause of the federal constitution (Amendment 5) as to claimants whose property rights could be established.

The surveyor general was authorized to investigate claims to Mexican land grants by the Act of July 22, 1854, 10 Stat. 308, Section 8 of which reads as follows:

> "Section 8—That it shall be the duty of the surveyor general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico; and for this purpose may issue notices, summons witnesses, administer oaths and do and perform all other necessary acts in the premises. He shall make a full report of all such claims as originated before the cession of the territory to the United States by the Treaty of Guadalupe Hidalgo of Eighteen Hundred and Forty-Eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the

> territory showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of and titles to the land. Such report shall be made according to the form which may be prescribed by the Secretary of the Interior; which shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants and give full effect to the Treaty of Eighteen Hundred and Forty-Eight between the United States and Mexico; and until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government and shall not be subject to the donations granted by the previous provisions of this act."

While the statute above quoted provides that the surveyor general "may issue notices", it does not *require* that they be issued nor provide that notice be given to all adverse claimants. So far as the record in the present case is concerned, no notices were actually issued to anyone and, if they had been, it does not appear that Francisco Martinez was making any claim *adverse* to the people of the community. His claim was on behalf of himself "and associates."

The petition for confirmation was filed on August 25, 1856, (Tr 113) and the Report of the Surveyor General recommending it was dated September 10, 1856 (Tr 30). This period of sixteen days is certainly not a reasonable time in which notice *could* be given to adverse claimants under conditions that existed in 1856 in New Mexico.

Title is not directly involved in the present case (Tr 51-52). However, if the decision of the Court of Appeals stands unreversed, the right of at least 637 people (Tr 62) to govern their property through a Board of Trustees is denied and a serious cloud is placed upon their title. If the decision is correct in its interpretation of the Act of

Congress of June 21, 1860, 12 Stat. 71, it would deprive these people of their property without due process of law in violation of the Fifth Amendment to the federal constitution and, in addition, would violate the provisions of Article 8 of the Treaty of Guadalupe Hidalgo. Whether or not they would have any recourse in the courts and what their remedy might be is not an issue in the present case, but it seems likely there would be some recourse, at least, before Congress if a claim should be presented based upon violation of the treaty and deprivation of property rights in some 595,000 acres of land.

We think, therefore, it is of the utmost importance that this court should determine, once and for all, whether Congress did convert a Mexican community grant of approximately 595,000 acres of land into a private grant, and, if it did, whether such action was intended to be, *or could be*, conclusive as to parties not represented or heard.

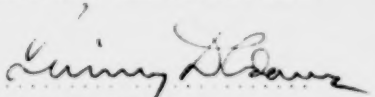
POINT II. THE TRIAL COURT ERRED IN ENJOINING PETITIONERS FROM ISSUING CERTIFICATES OF ELECTION IN OR OTHERWISE CARRYING INTO EFFECT AN ELECTION FOR A BOARD OF TRUSTEES OF THE TIERRA AMARILLA LAND GRANT, WHICH ERRONEOUS JUDGMENT AND DECREE WAS AFFIRMED BY THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT.

The argument under Point I applies to this specification of error, since the injunction was issued upon the sole ground that the Tierra Amarilla Land Grant was a private grant to Francisco Martinez and therefore, Article I of Chap. 9, New Mexico Statutes 1941 Annotated, did not apply. There is no question as to interpretation of the New Mexico statute. It is simply a question of whether the

grant is one to a community or individual for the purpose of establishing a community, as mentioned in Sec. 9-102, New Mexico Statutes 1941 Annotated, heretofore quoted. If it is such a grant, then the New Mexico statute applies, the election was properly held, and petitioners should not have been enjoined.

CONCLUSION

It is, therefore, respectfully submitted that this case is one of sufficient importance and public interest that this court should exercise its statutory authority to grant a writ of certiorari and thereafter should review and reverse said decision.



QUINCY D. ADAMS

HARRY L. BIGBEE

Attorneys for Petitioners

EXHIBIT "A"

United States Court of Appeals
TENTH CIRCUIT

No. 4357—November Term, 1951

M. G. MARTINEZ, FABIAN VIGIL, SALOMON LOVATO, CRUZ TRUJILLO and the BOARD OF COUNTY COMMISSIONERS, Rio Arriba County, New Mexico,

Appellants,

v.

J. LUIS RIVERA, J. ARMANDO RIVERA, J. GASPAR RIVERA, RUBEN RIVERA CHAVEZ, EMILIA RIVERA MUNIZ, ROSINDA RIVERA VALDEZ, MATILDA RIVERA, ROBERT PETERSON, EARL SHAWCROFT, JOHN SHAWCROFT, WADE SHAWCROFT, W. B. HAMILTON, MALCOLM STEWART, SR., ARAMINTA K. STEWART, LUGARDA SARGENT, MERCEDES SARGENT MIDDLEMIST, DORA SARGENT QUINLAND, MARGARET SARGENT GARCIA, T. W. CROWTHER, HOWARD CROWTHER, DON CROWTHER, WM. L. BAGWELL, L. N. BAGWELL, KARL BRUESSELBACH, and KARL BRUESSELBACH, trustee of the estate of WILLIAM KINDERMAN, deceased,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Quincy D. Adams and Harry L. Bigbee for Appellants
Oliver Seth for Appellees

Before PHILLIPS, Chief Judge, and MURRAH and PICKETT, Circuit Judges

PHILLIPS, Chief Judge

The question presented on this appeal is whether the Tierra Amarilla Land Grant, a grant from the Republic of Mexico, situated partly in the State of New Mexico and partly in the State of Colorado, is a community grant or a private grant.

The Act of July 22, 1854, 10 Stat. 308, created the office of Surveyor General of New Mexico. On September 10, 1856, the Surveyor General of New Mexico, pursuant to Sec. 8 of such Act, made a report to Congress on the claim of Francisco Martinez for confirmation of the grant, in which the Surveyor General recommended the confirmation of the grant in the following language:

> "The Provincial Deputation was authorized by the laws of the Republic of Mexico to make donations of land to individuals, and this case being covered by the Treaty of Guadalupe Hidalgo, and the decision of the Supreme Court of the United States, in the case of 'J. C. Freemont vs. the U. S.' the Grant made to Manuel Martinez, of which Francisco Martinez is the present claimant, is deemed by this office to be a good and valid grant, and the Congress of the United States is hereby respectfully recommended to confirm the same, and cause a Patent to be issued therefor by the proper department, and the land embraced within the boundaries set forth in said grant to be surveyed."

The report was numbered 33.

The grant was confirmed by Sec. 3 of the Act of June 21, 1860, 12 Stat. 71. The material part of Sec. 3 reads as follows:

> "Sec. 3. *And be it further enacted*, That the private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor general in his reports and abstract marked exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third of February eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, ***."

On February 21, 1881, a patent for the grant was issued to Francisco Martinez, his heirs and assigns.

In 1907, the legislature of the Territory of New Mexico enacted a statute for the management, control and government of community land grants. N. M. S. L. 1907, ch. 43, p. 62. The statute is now found in Art. 1, ch. 9, N. M. Stat. 1941 Ann., Secs., 9-101 to 9-117.

Section 9-102 in part provides:

> "Application of article.—This article shall apply to all grants of land made by the government of Spain, or by the government of Mexico, to any community, town, colony or pueblo, or to any individual for the purpose of founding or establishing any community, town, colony or pueblo; ***."

Section 9-103 provides that the management and control of all the grants to which the article is applicable is "vested in a board of trustees, to be known as the 'Board of Trustees of the ..... Land Grant' " and that such board shall have power "to control, care for and manage the said grant; ***to sue and be sued; ***to sell, convey, lease or mortgage so much of the land grant or real estate under its control as aforesaid as is held in common; ***to adopt and use an official seal; to appoint judges and clerks of election at all elections herein provided for, subsequent to the first, and to canvass the votes cast thereat."

Purporting to act under Sec. 9-106, the Board of County Commissioners of Rio Arriba County, New Mexico, undertook to call a special election to be held on April 2, 1951, for the purpose of electing five members as a board of trustees of the Tierra Amarilla Land Grant, and appointed election officials, designated polling places, and instructed the secretary of the Board of County Commissioners to give notice of such election. Notice of such election was given.

On March 26, 1951, the plaintiffs below, appellees here,

owners of large areas of land within the boundaries of the grant, brought this action against the members of the Board of County Commissioners of Rio Arriba County seeking an injunction restraining them from proceeding further with such election, from canvassing votes at such election, and from issuing certificates of election.

Jurisdiction is based on diversity of citizenship and the requisite amount in controversy.

During all the period intervening between the date of the confirmation of the grant and the action of the Board of County Commissioners on March 1, 1951, the grant had been managed and controlled as a private land grant and no action had ever been taken to elect a Board of Trustees to control and manage such grant.

By its judgment, the trial court granted a permanent injunction as prayed for in the complaint.

The duty of providing the mode for securing and establishing claims to Spanish and Mexican land titles and fulfilling the treaty of Guadalupe Hidalgo devolved upon the political department of the government.[1] Congress could either discharge that duty itself or delegate it to the judicial department.[2]

It was not until the Act of March 3, 1891, 26 Stat. 854, that Congress established a judicial tribunal for the adjustment and confirmation of claims under grants from the governments of Spain and Mexico of land in New Mexico. Prior to such Act, Congress reserved to itself the determination of such claims and by the Act of July 22, 1854, provided:

---

[1] Tameling v United States Freehold Co., 93 U. S. 644, 661
Astiazaran v Santa Rita Mining Co., 148 U. S. 80, 81
Yeast v Pru, D. C. N. M., 292 F. 598, 605

[2] Yeast v Pru, D. C. N. M., 292 F. 598, 605

> "****that the surveyor general for the Territory, under the instructions of the Secretary of the Interior, should ascertain the origin, nature, character and extent of all such claims; *** and should make a full report on such claims, with his decision as to the validity or invalidity of each under the laws, usages and customs of the country before its cession to the United States; and that his report should be laid before Congress for such action thereon as might be deemed just and proper, with a view to confirm *bona fide* grants, and to give full effect to the treaty of 1848 between the United States and Mexico."[3]

In a series of opinions, beginning with Tameling v United States Freehold Co., 93 U. S. 644, the Supreme Court held that the action of Congress, when taken, was conclusive as to the validity and the character or nature of the grant, and was not subject to review by the Supreme Court of the United States or any other judicial tribunal.[4]

The case of Reilly v Shipman, 8 Cir., 266 F. 852, involved the question of whether the Anton Chico grant in New Mexico was a private or community grant. Congress had confirmed the grant as a community grant. The court held that the character of the grant must be determined from the confirmatory act and that the courts were precluded from going behind the confirmation of Congress. To the same effect see Yeast v Pru, D. C. N. M., 292 F. 598, 607.

In Flores v Bruesselbach, 10 Cir., 149 F. 2d 616, 617, this court said:

> "Acting pursuant to the Act of Congress, approved July 22, 1854, 10 Stat. 308, the Surveyor General of New Mexico recommended the confirmation of the Tierra Amarilla Grant to Francisco Martinez. The

---

[3] Astarzaran v Santa Rita Mining Co., 148 U. S. 80, 82.

[4] See, also, Maxwell Land Grant Case, 121 U. S. 325, 366-367; Id., 122 U. S. 365, 370; Astarzaran v Santa Rita Mining Co., 148 U. S. 80, 82, 83.

> Grant was approved and confirmed to Francisco Martinez as Private Land Claim No. 3 by the Act of Congress, approved June 21, 1860, 12 Stat. 71. Congress thereby conclusively confirmed the title to the Grant in Francisco Martinez as a private land grant and its action is final and not subject to judicial review."

A like conclusion was reached with respect to the Tierra Amarilla Grant in H. N. D. Land Co. v Suazo, 44 N. M. 547, 105 P. 2d 774, 746-748.

The recommendation of the Surveyor General was that the grant should be confirmed to Francisco Martinez and that a patent therefor should issue to him. The recommendation was without condition or qualification. It clearly recommended confirmation of the grant to Martinez individually as a private land grant. By the confirmatory act, Congress confirmed the grant, without qualification or limitation, as recommended by the Surveyor-General.

The confirmatory act of Congress is final and conclusive and this court may not go behind that act and determine the character or nature of the grant from the antecedent documents.

Affirmed.

EXHIBIT "B"

COLONIZATION LAW

Comp. Laws, Vol. 1, Page 712, No. 416
Decree of August 18th, 1824

Art. 1. The Mexican Nation offers to foreigners who may come to establish themselves in its territory, security in their persons and in their property, *provided* they submit to the laws of the country.

2. The object of this law is those lands of the Nation, which, not being private property nor belonging to any corporation or town, can be colonized.

3. For this purpose the Congresses of the States, shall enact, as soon as possible, laws or regulations for the colonization of their respective demarcations, in strict conformity with the Constitutive Act, the general Constitution and the rules established in this law.

• • • • • • • •

9. In the distribution of lands, preference shall be given to Mexican citizens, and no distinction shall be made between them, except that only to which their individual merits and services to the country entitle them, or in equality of circumstances, residence in the place to which belong the lands to be distributed.

10. Soldiers who, in accordance with the offer of March 27th, 1821, are entitled to lands, shall be attended to in the States, upon presentation of the warrants the Supreme Executive power shall issue them for the purpose.

11. If, by the decrees of capitalization, according to the probabilities of life the supreme executive power should consider it advisable to alienate any portions of land in favor of any employees whatever, military or civil, of the Federation, it may do so from the public lands in the territories.

12. It shall not be allowed that more than one square league of one hundred thousand varas[2] of irrigable land, four of temporal[3] land, and six of range land, be united as a property in a single land.

13. New settlers shall not dispose of their property in mortmain.

14. This law guarantees the contracts contractors may make with the families they bring at their own expense; *provided*, they are not contrary to the laws.

15. No one who acquires property in lands by virtue of this law can retain them, if domiciled and residing outside of the territory of the Republic.

16. The government, under the principles established in this law, shall proceed to the colonization of the Territories of the Republic.

---

[2] This is an error. A square league of land contains twenty-five million square varas.

[3] The term, "tem-po-ral", accented on the last syllable, is applied to lands that are not irrigated, but depend on the seasons to produce a crop.

EXHIBIT "C"

REGULATIONS FOR THE COLONIZATION OF THE TERRITORIES

Code of Colonization, Mexico, 1893, Page 237, No. 71
November 21st, 1828

GENERAL PROVISIONS

Regulations for the colonization of the Territories of the Republic.

It being provided in Article 14 of the general Colonization Law of the 18th of August, 1824, that the government, under the principles established in said law, proceed to the colonization of the Territories of the Republic, and it being opportune to give to said article the most punctual and exact compliance, to enact some general provisions to facilitate its execution in the cases that may arise, the President has been pleased to adopt the following articles:

1. The Political Chiefs of the Territories are authorized, under the law of the General Congress of the 18th of August, 1824, and under the conditions that will hereafter be stated, to grant the public lands of their respective Territories to the contractors, families or private persons, Mexicans or foreigners, who may apply for them, for the purpose of cultivating them or living upon them.

2. Every applicant for land, whether contractor, head of family or private person, shall apply to the Political Chief of the respective Territory, with an application in which is given his name, country, profession, the number, nature, religion and other circumstances of the families or persons whom he desires to colonize, and shall also mark as distinctly as possible and describe on a map the land he applies for.

3. The Political Chief shall proceed immediately to obtain the necessary information as to whether or not the conditions required by said law of the 18th of August, are found in the application, both as regards the land and the applicant, either that this latter be attended to simply or that he be preferred, and shall at the same time hear the respective municipal authority as to whether any objection or not is found to the grant.

4. In view of all of which the Political Chief shall grant or not said application, in strict conformity with the law applicable to the matter, especially with that of the 18th of August, 1824, already cited.

. . . . . .